Filed 6/22/09 In re T.W. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re T.W., a Person Coming Under the Juvenile Court Law.	
A.B., Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF HUMBOLDT, Respondent; HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Real Party in Interest.	A124738 (Humboldt County Super. Ct. No. JV080290)

I.

INTRODUCTION

Petitioner A.B., mother of T.W. (the minor), seeks extraordinary writ review (Cal. Rules of Court, rule 8.452) of a juvenile court order made at a 90-day interim review hearing which terminated petitioner's family reunification services and set the matter for a hearing on August 10, 2009, to consider termination of petitioner's parental rights.

(Welf. & Inst. Code, § 366.26.)[1] She contends that the trial court erred in entering this order because "[n]ot only did the Department fail to show that reunification services, as offered, were reasonable, [but] the Department further failed to show that [petitioner] hadn't complied with the case-plan [*sic*]." We disagree and deny the writ.

II.

DISCUSSION

The minor was taken into protective custody on October 2, 2008, approximately five months after her birth. Responding to a referral, the social worker went to a motel room occupied by petitioner and her three young children—17-month-old twins and the minor, then four months old.[2] The worker found rancid food, soiled clothes, and debris piled high on the floors. There was an overwhelming stench with strong odors of urine and feces. The minor was coughing and having problems breathing. A thick blanket was covering her face. The twins were very dirty, with soiled diapers and mucus running from their noses. Petitioner appeared to be under the influence of drugs or alcohol. The social worker believed "that all 3 children were in danger of illness or death due to the severe neglect and lack of supervision in the household."

At the time of her removal, the minor appeared to be extremely ill and was immediately taken to the hospital. She was later diagnosed with pneumonia and was started on several medications, including antibiotics and breathing treatments. The attending physician stated that the minor would most likely have died if she had not been taken to the hospital. The minor had not received a medical examination or immunizations since her birth.

On October 6, 2008, the Humboldt County Department of Health and Human Services (the Department) filed a petition under section 300, subdivision (b) (failure to

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[1] All statutory references are to the Welfare and Institutions Code. All rule references are to the California Rules of Court. The minor and petitioner have unusual first names, so in order to protect the minor's privacy, we refer to them by initials only.

[2] Another occupant of the motel room was M.W., the minor's presumed father. We omit discussion of the specific allegations against M.W. because he is not a party to this writ proceeding, even though he was a party to the dependency proceedings conducted below.

protect) and subdivision (j) (sibling abuse). The report prepared for the jurisdictional hearing stated that petitioner had a long history of substance abuse and had lost custody of her three older children because she failed to participate in court-ordered reunification services. Based on petitioner's failure to reunify with her older children, the Department indicated that it could legitimately make a recommendation for bypassing family reunification services altogether pursuant to section 361.5, subdivisions (b)(11) [parental rights to siblings severed] and (b)(13) [chronic substance abuse].

Instead, at the jurisdictional hearing held in December 2008, an agreement was reached whereby the Department would offer petitioner family reunification services with a 90-day review. Petitioner agreed that if she was not in compliance with the case plan by the 90-day review date, services would be terminated. Petitioner signed a waiver of rights form and jurisdictional findings were made. The court adopted the parties' agreement as the order of the court. The clerk's minutes of the disposition hearing indicate that the court "advised both the mother and the father that the Court could order termination of [family] reunification services and select another . . . appropriate plan for the minor if the parents are not in compliance with the case plan in 90 days."

The Department's recommendation at the 90-day review hearing was to terminate family reunification services. The report documented the services that were offered to petitioner in the current case. Despite referrals for drug abuse and mental health counseling, the social worker wrote that petitioner's progress was "minimal." The report indicated that petitioner has had "limited" contact with the minor since she was removed from petitioner's custody, despite the support of several agencies to facilitate visitation. Petitioner had not kept the Department apprised of her whereabouts, and the Department was having difficulty contacting her. In summary, it was reported that petitioner "has not completed any of her case plan goals in the past three months and is no longer engaging in services to address the concerns that brought her family to the attention of the court."

At the 90-day interim review hearing held on April 13, 2009, the court terminated family reunification services and set a hearing pursuant to section 366.26 to occur on August 10, 2009. In its written order, the trial court found that petitioner did not comply

with the case plan and made "minimal" progress toward alleviating or mitigating the causes necessitating placement out of the home. Petitioner then initiated this writ proceeding.

III.

DISCUSSION

In her first argument, petitioner claims she "demonstrated that she complied with the case-plan [*sic*], to some degree, in the 90-day period . . . ; for this reason, she should have been entitled to services for the duration of the 6-month period." In support of this argument, petitioner points out that during the early portion of the 90-day period, she participated in some mental health counseling sessions, and she sought some substance abuse treatment. She also had several visits with the minor. Petitioner claims that this should have been deemed sufficient to ensure the six-month duration of reunification services because the parties' agreement did not require "*substantial* compliance, but only *mere* compliance" with the reunification plan.

This identical argument was made at the conclusion of the trial. In response, the court made the following remarks: "I suppose that we could quibble over the term compliance whether it is minimal compliance, adequate compliance or substantial compliance; but when I look at the report . . . I simply cannot find compliance based on the circumstances and the facts presented . . . ." The court's conclusion that petitioner had not made a reasonable effort to rectify the problems that led to the minor's removal was amply supported by the evidence before it. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881 [substantial evidence standard applies to whether a parent would benefit from continued reunification services].)

As the Department points out, "[a]t the time of the hearing, Petitioner was not participating in any aspect of her case plan." The Department details the unchallenged evidence of petitioner's sporadic participation in services: "[A]t the time of the 90-day review hearing, Petitioner had attended 15 out of 36 recovery groups at Healthy Moms and then completely stopped going for the two months before the hearing. Therefore, she was not participating in substance abuse treatment or being drug tested. Petitioner went

to several sessions of counseling and then stopped going in December and had not gone to counseling for almost four months. She had not visited her children for almost four months. Petitioner had almost no contact with the Department and the Department had no way of contacting her other than mailing her letters."

While it is highly unlikely the court expected that 90 days worth of reunification efforts would actually ameliorate the serious and significant problems that led to the minor being removed from petitioner's care, the court was entitled to expect that at the end of the 90-day period, petitioner would be able to demonstrate some sincere and sustained progress toward her reunification goals. Instead, despite a brief period where she was engaging in services, by the time of the 90-day hearing, there was no evidence that petitioner was complying with any aspect of the reunification plan to which she agreed. The court did not err in finding that petitioner's "lackadaisical [and] half-hearted efforts" were not indicative of reasonable effort. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 99.)

In the second prong of her argument, petitioner claims that the Department's "generic case-plan [*sic*]" was "not tailored to meet the specific needs of the family because, as applied to this family, it did not assist in ameliorating the risks to the minor . . . ." Petitioner is correct to the extent she argues that the Department was required to make a good faith effort to provide reunification services tailored to the unique needs of petitioner's family by identifying the problems leading to the minor's removal, offering services designed to remedy those problems, maintaining reasonable contact with petitioner, and making reasonable efforts to assist petitioner when compliance proved difficult. (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1039.)

The record clearly reflects that petitioner's primary problem, which the case plan was designed to resolve, was her substance abuse and her apparent unwillingness and inability to properly parent her children. The Department, in conjunction with other agencies, offered petitioner referrals for housing, substance abuse counseling, parenting education and visitation. Thus, the conditions of the reunification plan in this case were reasonable and fair, and were properly designed to prevent a recurrence of the

circumstances that led to the minor being removed from petitioner's custody in the first place.

While the Department complied with its obligation to provide services, petitioner failed to take advantage of the services offered to her. Although petitioner was provided with appropriate referrals and began engaging in services, she attended irregularly, she never committed herself to the process, and eventually she stopped going altogether. The requirement that the Department provide reunification services to the parent of a dependent child, "is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5; *In re Christina L.* (1992) 3 Cal.App.4th 404, 414.) After all, reunification services are voluntary; they cannot be forced onto parents who are unwilling or indifferent. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365; *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) Substantial evidence supports the juvenile court's finding that the services offered to petitioner were reasonable under the circumstances of this case. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971 [challenge to the adequacy of reunification services reviewed for substantial evidence].)

IV.

DISPOSITION

The petition is denied. The request for stay of the section 366.26 hearing, which is set for August 10, 2009, is denied, and our decision is final as to this court immediately. (Rule 8.264(b)(3).)

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Ruvolo, P. J.

We concur:

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Reardon, J.

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Rivera, J.